

Ruling 407-92-1

Issued: April 27, 1992

Effective: April 27, 1992

A ruling has been requested concerning the applicability of certain provisions of the Gross Receipts and Compensating Tax Act to the following facts:

X is a church incorporated under the laws of the State of New Mexico as a non-profit corporation. The church has not obtained a determination letter from the Internal Revenue Service granting tax exempt status under the provisions of Section 501(c)(3) of the Internal Revenue Code.

X asks whether its receipts qualify for the exemption in Section 7-9-29 NMSA 1978 and whether receipts from sales to it qualify for the deduction in Section 7-9-60 NMSA 1978 on the basis of its status as a church. The church cites the following language in the Instructions for Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code): "The following organizations will be considered tax exempt under Section 501(c)(3) even if they do not file Form 1023: (a) Churches . . . ." This language derives from Section 508 of the Internal Revenue Code (IRC) exempting churches from the requirement of giving notice to the Secretary in order to "be treated as an organization described in Section 501(c)(3)." The church suggests that this language means that the church does not have to get a determination from the Internal Revenue Service (IRS) and that the Department should recognize the church's tax exempt status under Section 501(c)(3) without the church having to apply and get the determination.

IRS Form 1023, itself, refutes taxpayer's suggestion. The form notes that:

"Even if these organizations are not required to file Form 1023 to be tax exempt, they may wish to file Form 1023 and receive a determination letter of IRS recognition of their Section 501(c)(3) status in order to obtain certain incidental benefits such as: public recognition of their tax exempt status, *exemption from certain state taxes.*"

For whatever reason, the IRC allows churches a tax exemption without inquiring into their status as a religious organization. But if a church wants to have anyone else accord them special treatment from their Section 501(c)(3) status, they must obtain a determination letter from the IRS. It would not be wise for New Mexico to simply rely on the title of a taxpayer as a "church." Tax court decisions are replete with rejections of Section 501(c)(3) status for organizations described as a "church."

Provisions of Section 7-9-29 NMSA 1978 specifically require that any non-profit organization must "have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3)". Similar language is incorporated into the requirements of Section 7-9-60 NMSA 1978. The exclusion, provided by Section 508 of the IRC, of having to apply for recognition as a tax exempt organization does not grant the organization an exemption under Section 501(c)(3). In administering the provisions of the Gross Receipts and Compensating Tax Act, the Department cannot, therefore, permit a taxpayer the exemptions or deductions permitted [under] Section 501(c)(3) organizations without a determination of such status by the IRS.